

No. 9(1)82-PV-6Lab./10012.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s K. K. Spun Pipe Tigaon Road, Ballabgarh:—

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 9/1981

between

SHRI LAKHAN RAM, WORKMAN AND THE MANAGEMENT OF M/S K.K. SPUN
PIPE, TIGAON ROAD, BALLABGARH

Present—

Shri Darshan Singh, for the workman.

Shri R. L. Aneja, for the management.

AWARD

The Government of Haryana referred the following dispute between the workman Shri Lakhan Ram and the management of M/s K.K. Spun Pipe, Tigaon Road, Ballabgarh, by order No. ID/FD/94/80/4014, dated 22nd January, 1981 to this Tribunal. for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Lakhan Ram was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of parties, the following issues were framed by my order dated 6th April, 1981:—

- (1) Whether the workman abandoned his job of his own.
- (2) Whether the termination of service of Shri Lakhan Ram was justified and in order? If not, to what relief is he entitled?

And the case was fixed for evidence of the management who examined Shri Ishwar Chand Partner as MW-1. The workman examined himself as his own witness as WW-1. Argument were heard. My finding issue-wise is as under:—

Issue No. 1—

MW-1 deposed that the workman joined service in November, 1976. He left in 1977. He again worked from May, 1977 to September, 1977. He again joined in April, 1977 and left in December, 1977. He had not turned up on duty uptill now. His service was not terminated. The management had not received any application from the workman. He had left for his village but did not return. He never submitted any demand regarding uniform and D. A. etc. In cross examination, he stated that he had not brought attendance and wages register for the year 1977 to 1979. He admitted that E. S. I. Scheme was enforced in the factory. He could not tell E. S. I. Code number. His name appeared in the attendance register upto 31st December, 1979. He was not issued any charge-sheet. He received his wages for the period upto 31st January, 1979. No full and final receipt was taken from him.

The concerned workman deposed that he had worked in the factory for the last 7 years. He was illiterate. His service was terminated 6th May, 1980. His demand notice was Ex-1. He had asked for minimum wages. He was not paid any notice pay or compensation. He never left service in between. In cross examination he denied that he had left service in November, 1976 and rejoined in 1977. He also denied that he had again left in 1977 and 1980. He also denied that the factory had been rented out. He further denied that he had left the service of his own accord.

The management has not placed on record any documentary evidence to show the migratory character of the workman in joining and leaving service. The management has also failed to prove absence or otherwise the workman by any documentary evidence. Therefore, I decide this issue against the management.

Issue No. 2—

There is no evidence to show that the workman resigned from the job. It was also not the case of the management that the workman was charge-sheeted or removed from service due to misconduct. The management has admitted that the workman was in its employment. Therefore, I hold that the termination of service of the workman was unjustified and not in order. In the above circumstance, I find that he was entitled to his reinstatement with full back wages.

While answering the reference I pass my award that the workman was entitled to his reinstatement with full back wages.

M. C. BHARDWAJ,

Dated the 13th September, 1982.

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1024, dated 10th September, 1982.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 9 (1)82-PV-6 Lab/9997.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Paul Rubber Works Plot No. 9, N. I. T. Faridabad.

BEFORE S HRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 78 of 1982

Between

SHRI RAM PARSAD, WORKMAN AND THE MANAGEMENT OF M/S. PAUL RUBBER
WORKS PLOT NO. 9, N. I. T. FARIDABAD

Present :—

Shri Manohar Lal, for the workman.

Nemo, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Ram Parsad and the management of M/s. Paul Rubber Works, Plot No. 9, N. I. T. Faridabad, by order No. ID/FD/21/82/9875, dated 9th March, 1982, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Ram Prasad was justified and in order ? If not to what relief is he entitled ?

Notices of the reference were issued to the parties. The workman appeared but the management refused to receive the notice of the case. Therefore, a U. P. C. notice under rule 18 of the Industrial Disputes Punjab Rules, 1958 was also sent but the management failed to appear despite it. The management was proceeded ex parte and the case was fixed for the evidence of the workman.

In evidence, the workman examined himself and deposed that he worked in the factory for the last 13 years. His work was satisfactory. He was removed from service without any charge-sheet, warning, enquiry and reason.

Believing the exparte statement of the workman, I find that the order of termination of service was wrongful. Therefore, I give my award that the workman is entitled to his re-instatement with full back wages.

Dated the 14th September, 1982.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1009, dated the 22nd September, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

The 15th September, 1982

No. 9(1)82-6 Lab/8673.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Busching Schmitz Private Limited, 18/6, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 280 of 1981

between

SHRI SHIV CHARAN LAL, WORKMAN AND THE RESPONDENT-MANAGEMENT OF
M/S. BUSCHING SCHMITZ PRIVATE LIMITED, 18/6, MATHURA ROAD,
FARIDABAD

Shri Darshan Singh, for the workman.

Shri V.K. Murti, for the respondent-management.

AWARD

This reference No. 280 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. 1D/FD/191/81/53011, dated 23rd October, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Shiv Charan Lal, workman and the respondent-management of M/s. Bushching Schmitz Pvt. Ltd., 18/6, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of service of Shri Shiv Charan Lal was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to demand notice and statement of claim is that he was a permanent workman since February, 1966 as Purchase Assistant, drawing Rs. 360 per month and the management illegally terminated the service of the workman on 2nd June, 1981 without any reason so he is entitled for the back wages and continuity of service.

The case of the respondent according to written statement is that the reference is not sustainable and the respondent factory has been closed before the dispute was raised. The respondent did not receive any notice from the Labour Officer-cum-Conciliation Officer for conciliation proceedings. They received the letter for sending the conciliation proceedings to the Labour Commissioner for which they replied to the Labour Commissioner and the Labour Office and Labour Officer and requested for the time for conciliation which was not granted to the respondent. The service of the workman were never retrenched. The workman worked for 16 years as helper in the purchase department. The respondent factory was not working properly and the workman searched another job and got it with M/s. Industrial Trading Corporation, NIT., Faridabad for his financial gains and left the service of the respondent without giving any notice to the respondent. When the respondent sent the letter to the Labour Commissioner alleging that the workman left the services due to joining the service in the aforesaid company and under a copy to the workman, he left the service of M/s. Industrial Trading Corporation and joined the services of one M/s. Goodwell Industries at a still higher salary. In this way the workman is wrong doer and his services was not terminated by the respondent but he has left the services of his own accord to gain higher salary. So, the reference is bad in law and it should be dismissed.

On the pleadings of the parties, the following issues were framed :—

1. Whether the workman abandoned his service due to absent from duty ? If so, to what effect ?
2. Whether the factory was closed due to power cut in April, 1981 ? If so, to what effect ?
3. As per reference ?

My findings on the issues is as under :—

Issue No. 1 :—

The representative of the respondent argued on this issue that the workman was an old employee of the respondent and working as Purchase Assistant in the purchase department. The workman used to purchase the parts from the market which are required for the respondent factory and had the connection with other factories and the other factories offered the workman higher wages. So he joined M/s. Industrial Trading Corporation, No. 1, NIT, Faridabad without informing the respondent. The workman raised demand notice for financial gains from the respondent management and when the respondent replied the same to the Labour Commissioner the workman left that service and joined another M/s. Goodwell Industries, Faridabad Old. So he left the services of his own accord without informing the respondent. He further argued that the same plea was taken by the respondent in this Hon'ble Court and this Hon'ble Court asked the workman to join his duty with the respondent. The workman on the direction of the Court went to Delhi to resume his duty but did not work and reported the matter to the Court.—*vide* his letter, dated 23rd January, 1982. The respondent has also sent the report to the Court through registered post which was received in this Court on 19th January, 1982.

The representative of the workman argued that as stated by the workman as WW-1 that he was terminated on 2nd June, 1981 without any reason. He argued that the respondent has failed to prove this issue and does not file any document to prove this issue. So, it is proved that the workman was terminated and he did not abandon his service of his own.

After hearing the arguments of both the parties, I am of the view that the representative of the respondent has failed to prove this issue by any way. Simply saying that the workman joined another concern on higher salary does not prove the fact that the workman joined the service. If the workman has joined the service as stated by the respondent witness then they should have produced the person of that factory to prove this fact that the workman worked in those factories for such and such period. So, this issue was not proved by the respondent and this issue is decided in favour of the workman and against the respondent.

Issue No. 2 :

Issue No. 2 is as whether the factory was closed due to power cut in April, 1980. For this issue the representative of respondent argued that the respondent sent the letter Ex- M-1 to Haryana State Electricity Board for payment of bills clearly shows that the factory was closed due to shortage of power in the factory and due to shortage of power the factory could not work properly and went in loss and could not pay the bills of the electricity. He further argued that the workman in his application dated 23rd January, 1982 has admitted this fact which is on the file. The application was given by the workman when he was sent to join his duty by the Hon'ble Court. He has further stated in his application that he was asked to work in Kothi as home servant for which he was not ready as the management has no work for his job as the business of the management is closed. He further stated that he is not ready to work as home servant. This shows that the factory is closed. The workman representative admits this fact in the Court that the

business of the respondent factory is closed and there is no working in Faridabad. After the admission of the workman and the representative of the workman that the factory is not working and closed, it need no other proof that the factory is closed and issue is decided in favour of the respondent against the workman.

Issue No. 3 :

The representative of the respondent argued that the respondent did not terminate the services of the workman and the same plea was taken before this Hon'ble Court and the respondent though it is closed was ready to accommodate the workman in his office at Delhi but the workman is employed in Faridabad and does not want to go to Delhi so he made the statement and the application that the respondent want to get home work from the workman for which he is not ready. The respondent is still ready to accommodate the workman but he is not willing to work in his office at Delhi clears the position that the workman was not terminated by the respondent but the workman left the service of the respondent because he get the higher salary in another factory. As stated by the workman in his statement that the respondent used to pay him Rs. 5 as travelling allowance from Faridabad to Delhi and when they are paying Rs. 5 as travelling allowance to the workman and the workman had a good job in Faridabad did not want to work in Delhi so he left the services of his own.

The representative of the workman argued that the services were terminated by the respondent without any substantial reason or cause as stated by the workman in his statement as WW-1.

After hearing the arguments of both the sides and carefully going through the file, I am of the view that due to power shortage the respondent factory was in a loss and about to close. It is decided in Issue No. 2 that the factory is closed as admitted by the workman and his representative at the time of alleged termination. The workman raised this demand notice on 27th November, 1981 after a lapse of 5 months as he has alleged in his demand notice that his services were terminated on 2nd June, 1981. When the factory is closed the workman could not be reinstated. The termination of the workman is not justified because though there is no letter from the respondent side to call the workman for duty. But when the respondent has no work to do for what purpose they can call the workman in these circumstances. The workman is only entitled for his closure benefits under section 25-FFF of the Industrial Disputes Act.

This be read in answer to this reference.

Dated 3rd August, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 1781, dated 17th August, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)82-6Lab/8674.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad/Rohtak in respect of the dispute between the workmen and the management of M/S S.S.J knitting and Finishing Mills Ltd. Mathura Road, Faridabad.

**IN THE COURT OF SHRI HARI SINGH KAUSHIK PRESIDING OFFICER, LABOUR COURT
HARYANA, FARIDABAD.**

Reference No. 234 of 1981

Between

SHRI BHARAT PAL, WORKMAN AND THE RESPONDENT OF M/S S.S.J. KNITTING AND FINISHING MILLS, LIMITED, MATHURA, ROAD, FARIDABAD

Shri M.K. Bhandari, for the workman

Shri B.R. Grover, for the respondent management.

AWARD

This reference No. 234 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana vide his order No. ID/FD/133/81/44852, dated 2nd September, 1981, under section 10 (i) (c) of the Industrial Disputes Act, 1947, existing between Shri Bharat Pal, workman and the respondent management of M/s. S.J. Knitting and Finishing Mills, Limited, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of service of Shri Bharat Pal was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to his demand notice and rejoinder is that the workman joined the services of the respondent on 6th December, 1976 as Sticherman and drawing Rs. 305 per month at the time of his termination. He proceeded on leave on 3rd May, 1981 to 11th May, 1981 with prior approval of the respondent management. After his leave period he worked on 12th May, 1981 and on 13th May, 1981. The workman was stopped at the gate of the factory without any cause or reason and was not allowed to enter in the factory premises despite his regular visits. The workman wrote a letter to the respondent on 19th May, 1981 in this connection but received no reply. On 1st June, 1981 the workman made a complaint to the Labour Inspector but the respondent did not appear before the Labour Inspector and the workman served demand notice on 17th June 1981. The respondent terminated the services of the workman without any reason and without any letter. So the termination order is unjustified and the workman is entitled for his reinstatement with continuity of service and back wages.

The case of the respondent according to written statement is that the workman was absent from 3rd May, 1981 to 11th May, 1981 and came on duty on 12th May, 1981. He was called to explain his absence without sanction of leave, he instead of submitting his explanation again started being absent from his duties. He never submitted his medical certificate for his absence. The standing orders are applicable in the factory. As per these standing orders his name was struck off from the roll of the factory for long absence and the workman is gainfully employed. So the workman abandoned his services. So the reference be rejected.

On the pleadings of the parties, following issues were framed:—

1. Whether the workman lost his lien on account of his being absent from duty?
2. As per reference?

My findings on the issues is as under:—

Issue No. 1 :

The representative of the respondent argued on this issue that the workman was absent from duty from 3rd May, 1981 to 11th May, 1981 and joined his duty on 12th May, 1981. On 12th May, 1981 he was asked to explain his absence without sanction of leave. The workman inspite of submitting his explanation started being absent from duties. The workman never submitted any application or medical certificate for leave and remained absent from 3rd May, 1981 to 11th May, 1981 and from 13th May, 1981 to 31st May, 1981. Thereafter his name was struck off from the muster roll of the company being absent according to the Model Standing orders which are applicable in the factory. He further argued that as stated by Shri R.N. Sharda MW-1 in his stated the workman was absent from duty from 13th May, 1981. After asking for the explanation for the last absence. The respondent sent a letter Ex. M-2 dated 24th May, 1981 in reply of his letter dated 19th May, 1981 which is Ex. W-1. The workman gave no reply of this letter and did not turn up to join his duty. The absence of the workman is shown in Ex. M-1. The abstract of the attendance register which was brought in the Court by the respondent witness MW-1 and stated that the workman gave no application for leave. So the workman lost his lien and abandoned his service of his own accord due to long absence.

The representative of the workman argued on this issue is that the workman joined his duty as Sticherman on 6th December, 1976 and drawing Rs. 305 as salary per month. He was a permanent employee and proceeded on leave from 3rd May, 1981 to 11th May, 1981 with prior application and approval of the management as stated by the workman in his own statement as WW-1. He went for some personal work to Gawalier and finished his work on 8th May, 1981 and came on duty on 9th May, 1981. He further argued that the workman has submitted his attendance card Ex. W-3 on which on 9th May, 1981 he has been shown present in the factory and later on his present was struck off and he was shown absent in the attendance register Ex. M-1. On 10th May, 1981 the workman cannot attend his duty due to Malaria fever and 11th May, 1981 was the weekly off and the workman attended the duty on 12th May, 1981 and on 13th May, 1981 he was stopped at the gate without any order or reason. The workman, according to his statement attended the gate up to 18th May, 1981 for joining his duty but he was not allowed and on 19th May, 1981 he sent a letter to the respondent which is Ex. W-1 which the respondent received as it was sent through registered post which is Ex. W-2 but the workman did not receive any reply of these letters. After waiting its reply the workman submitted an application before the Labour Inspector which is Ex. W-4 dated 1st June, 1981 but the respondent did not appear before him in spite of the

notice. The Labour Inspector advised the workman to give the demand notice so he gave the demand notice. He further argued as stated by the respondent that he was called the explanation on 12th May, 1981 for his last day's absence and after asking these explanation the workman started absent from the duty inspite of giving the explanation. But the respondent has not produced any such letter in the court by which the explanation of the workman was called for his absence. It shows that there was no explanation called by the respondent. If there has been any such letter for asking the explanation of the workman for his absence the respondent should have submitted in the court. In the absence of such letter it is presumed that no such letter was given to the workman for his absence. The workman was stopped at the gate on 13th May, 1981 without any reason. He further argued that letter Ex. W-1 which was sent by the workman on 19th May, 1981 to the respondent was received by the respondent for which they alleged that they gave the reply on 24th May, 1981 which is Ex. M-2 but the respondent has not produced any document to prove that how this letter was sent to the workman by UPC, Registered letter or by hand. There is no explanation to deliver this letter to the workman and in the absence of this prove it is also presumed that this letter was not sent to the workman and after waiting the reply the workman submitted explanation which is a clear prove of his victimization and he wants relief of this victimization. The document Ex. M-1 is the abstract of attendance register and attendance card of the workman Ex. W-3 does not tally with each other. Further according to the respondent witness MW-1 was asked in his cross-examination about the maintenance of leave application. He has stated in his cross-examination that no such record is maintained in the factory for leave application. There is no prescribed proforma for leave application in the factory as stated by the respondent witness in his cross-examination. He further argued that the respondent witness has stated in his statement that the workman's name was struck off from the roll as he was absent from 13th May, 1981 to 31st May, 1981. He has not stated that the workman was not absent from 3rd May, 1981 to 11th May, 1981 which has created doubt and the workman was terminated without any reason. The submission of the respondent that the workman was absent from 3rd May, 1981 to 11th May, 1981 is false because the workman after his removal from service has sent a letter to the respondent on 19th May, 1981 from stopping him on the gate and went to the Labour Inspector for this very reason. If he would be guilty of his absence and he had no explanation for the absence then he would not have acted in this manner. So the case of the respondent is false and that workman has lost his lien due to long absence but he was stopped at the gate on 13th May, 1981 and did not allow him to join his duty.

After hearing the arguments of both the parties and going through the file I am of the view that there is some force in the arguments put forward by the workman's representative. There is no letter on the file for asking the explanation of the workman for his absence and there is no proof on the file that the letter dated 24th May, 1981 was delivered to the workman.

On the other hand the workman made the request to the respondent on 19th May, 1981 through registered post and sent the complaint to the Labour Inspector for this incident which shows the intention of the workman and the workman has not lost his lien due to his absence from duty for a long time. So the issue is decided in favour of the workman and against the respondent.

Issue No. 2 :—

After deciding the issue No. 1 in favour of the workman and against the respondent there is no need to discuss this issue at length. When the main plea of the respondent about the lost of lien was turned down by me. So the respondent has nothing to say about this issue. Moreover both the parties have not argued on this issue. So I hold that the termination of service of the workman is neither justified nor in order and the workman is entitled for reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

Dated 3rd August, 1982.

HARI SINGH KAUSHIK.

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endstt. No.1782, dated 17th August, 1982

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK.

Presiding Officer,
Labour Court, Haryana,
Faridabad.